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DEPARTMENT OF STATE

22 CFR Parts 120, 123, 124, 125, and 126

[Public Notice: 9606]

RIN: 1400-AC88

Amendment to the International Traffic in Arms Regulations: Procedures for Obtaining State Department Authorization to Export Items Subject to the Export Administration Regulations; Revision to the Destination Control Statement; and Other Changes

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: As part of the President's Export Control Reform (ECR) initiative, the Department of State is amending the International Traffic in Arms Regulations (ITAR) to clarify rules pertaining to the export of items subject to the Export Administration Regulations (EAR), revise the destination control statement in ITAR §123.9 to harmonize the language with the EAR, make conforming changes to ITAR §§124.9 and 124.14, and make several minor edits for clarity.

DATES: This rule is effective [insert date 90 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792;

email DDTCResponseTeam@state.gov. ATTN: Regulatory Change, Destination Control Statement.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule on May 22, 2015 (80 FR 29565) and received 17 public comments on the proposed changes to the ITAR. The Department makes the following revisions in this final rule:

Items subject to the EAR:

This final rule adds clarifying language to various provisions of the ITAR pertaining to the use of exemptions to the license requirements and the export of items subject to the EAR, when the EAR items are shipped with items subject to the ITAR. These revisions include guidance on the use of license exemptions for the export of such items, as well as clarification that items subject to the EAR are not defense articles, even when exported under a license or other approval, such as an exemption, issued by the Department of State. The Department received the following comments on the proposed changes, which are summarized here, along with the Department's responses:

One commenter raised a concern that the proposed revised language restricts industry's exemption options for items subject to the EAR to situations only when related USG authorization exists for the end item. The Department accepts the comment and has revised §120.5(b) to state that items subject to the EAR may be exported pursuant to an ITAR exemption if exported with defense articles. ITAR exemptions may not be used for the independent export of items subject to the EAR, i.e., a single physical shipment of EAR item(s) that does not include any USML item with which the EAR item may be

used. If the items subject to the EAR will be transferred separately from a defense article, license exceptions available under the EAR may be used to authorize the transfer.

One commenter noted that, the proposed §120.5(b) inadvertently excluded the exemptions at Part 123 of the ITAR from the parenthetical list of applicable ITAR parts. The Department concurs with this comment and adds a reference to part 123 into the parenthetical phrase.

One commenter noted that the Department should provide clarification and guidance on the proper classification to be entered into the Automated Export System (AES) for items subject to the EAR shipped under an ITAR exemption. The commenter noted that proposed edits to §123.9(b)(2) did not address AES filings. The Department notes that the Department of Commerce (U.S. Census Bureau and Bureau of Industry and Security) has already clarified this. The EAR classification needs to be provided in the export control information on the Electronic Export Information (EEI) filing in AES for all items subject to the EAR, including EAR99 designated items that are authorized for export under a State Department authorization.

One commenter noted that the changes in this rule require that if a shipment includes both ITAR and EAR controlled items then the Export Control Classification Number (ECCN) of items in the shipments must be listed, including any EAR99 designation (if the authorization for the export was through an approved State Department license), and requires the country of ultimate destination, end-user, licensee information to be provided on the export documents. The flexibility of exporting items

subject to the EAR under a State Department authorization does warrant this additional level of identification for all of the items subject to the EAR that the Department authorizes for export. Therefore, although the Department understands the comment, given the hybrid nature of the ITAR authorization under the §120.5(b) process, the Department has determined the requirements are warranted.

One commenter noted that the text under §120.5(b) does not specify that “items subject to the EAR” exported under an exemption must be exported with the specific defense article. They recommend clarifying that this is the intent of the modification or if not, to change the text, so it comports with the requirements for “items subject to the EAR” exported under a license or other approval. The Department concurs with this comment. This final rule adds clarifying text to §120.5(b) to specify that in order to use a Department of State license exemption the item subject to the EAR must be exported with a defense article.

Items exported to or on behalf of an agency of the U.S. Government:

This final rule does not revise the licensing exemption language in §126.4. This section will be addressed in a separate rulemaking and comments submitted in response to the proposed rule on that topic will be addressed in that rulemaking.

Revision to the Destination Control Statement:

This final rule revises the Destination Control Statement (DCS) in ITAR §123.9 to harmonize the text with the text of the DCS in EAR §758.6, which is the subject of a

companion rule to be published by the Department of Commerce. The DCS revision is also reflected in §124.9 and 124.14. This change is being made to facilitate the President's Export Control Reform initiative, which has transferred thousands of formerly ITAR-controlled defense article parts and components, along with other items, to the Commerce Control List in the EAR, which is under the jurisdiction of the Department of Commerce. This change in jurisdiction for many parts and components of military systems has increased the incidence of exporters shipping articles subject to both the ITAR and the EAR in the same shipment. Both regulations have a mandatory Destination Control Statement that must be on the export control documents for shipments that include items subject to both sets of regulations. This had previously caused confusion to exporters as to which statement to include on mixed shipments, or whether to include both. Harmonizing these statements will ease the regulatory burden on exporters.

Summary of Public Comments on the Destination Control Statement

Most of the public comments fell into one of four areas: (1) harmonization of DCS language between the ITAR and the EAR; (2) harmonization of documentation between the ITAR and EAR; (3) providing exporters a sufficient implementation period to adjust to the new DCS requirements; and (4) consideration of the different documents required for shipping, with the commercial invoice being the clear favorite and most appropriate for the DCS to be included on.

This final rule includes an effective date 90 days after publication in the Federal Register for the DCS provisions. It also specifies that the exporter is responsible for including the DCS on the commercial invoice. Additionally, the DCS text adopted in this final rule is identical to the DCS text adopted in a companion rule by Commerce.

The Department received a small number of comments on the proposed rule which were specific to the Commerce proposed rule, and Commerce is addressing these comments in its final rule.

Public Comments and the Department's responses

Several commenters noted that harmonization represents a step in the right direction and will minimize confusion as to which DCS must be used depending on the jurisdiction of the item. The Department concurs with this comment.

Several commenters objected that the Department's requirements for placement of the DCS were out of step with Commerce and not harmonized in the proposed rule. The Department agrees, and the requirement for placement of the DCS is being harmonized by the Departments of State and Commerce.

Several commenters stated that the government should not specify the documents that require the DCS, but rather should impose a high level requirement and leave it to parties to choose which document(s) to include. The Department disagrees. Specifying

which documents the DCS will be placed on will create greater transparency, as well as make it easier for various United States government agencies, as well as exporters and other consignees, to identify whether the DCS has been properly included.

One commenter noted that this appears to be a case of harmonization for the sake of harmonization, and would appear to have the potential to create substantial confusion among recipients, and impose significant burdens without a correspondingly significant benefit to the government. The Department disagrees. Ensuring the DCS reaches the parties that will receive items exported and/or reexported is key to the United States achieving its policy objectives.

One commenter stated that it was confusing that Commerce uses the term “commercial invoice” whereas the Department uses “invoice.” For some exporters, the term “invoice” refers to the final billing document that moves electronically, whereas the commercial invoice moves with the freight. The Department agrees that the terms should be harmonized. Based on other comments received, the term “commercial invoice” is well understood by industry, so this final rule adopts the term “commercial invoice” to reference the document that moves with the freight.

One commenter objected to the DCS, as it imposed additional burdens and costs on the public and trade. Further, the commenter noted that to add this information separately to the bill of lading, air waybill and other transportation documentation could have the unintended effect of signaling the package contents to third parties. The Department disagrees with the commenter’s characterization as these statements are

already required and the harmonization of the DCS will lower the administrative burden on exporters and re-exporters. In addition, and as noted elsewhere in this final rule, the Department is removing the requirement to include the DCS on transportation documents.

One commenter stated that the air waybill imposed a severe space limitation with regard to including the DCS. According to the commenter, including information regarding a country of ultimate destination, end-user, and license or other approval number or exemption citation information could be unduly burdensome. The Department concurs, as noted elsewhere in this final rule, and the requirement to include the DCS on transportation documents has been removed.

One commenter noted that the State Department should consider a shorter DCS, such as: “This shipment contains goods under the jurisdiction of the ITAR.” This statement could more easily be converted to an electronic format than the complete DCS. The Department disagrees, as an ITAR specific DCS would defeat the purpose of harmonization between the Departments of State and Commerce and would not address mixed shipments.

One commenter suggested that the DCS and other export control related information (e.g., USML category) be placed on a separate document that serves multiple purposes, and can be sent with the items being shipped or separately in order to convey to the consignees that the items are U.S. export regulated and are intended only for the designated end user and the destination identified. The Department acknowledges there

would be some benefits to such an approach, but it is preferable to require the DCS on an existing document (the commercial invoice) that is created in the normal course of business. Other public comments support this conclusion.

Numerous commenters requested a delay in the implementation date of between 180-240 days after publication of the final rule to allow sufficient time for affected parties to make the required changes to system programming, document revision and related procedural tasks. Other commenters requested a 180 day delayed effective date, along with a delayed compliance date. The Department agrees that industry will need time to update their systems and has included a delayed effective date of 90 days after publication of this final rule.

One commenter requested public meetings in order to comment on the proposed changes, and that State and Commerce also conduct outreach prior to new changes being implemented. The Department values public participation in the rulemaking process and has provided an opportunity for public review and comment on the proposed rules. For those commenters that raised concerns, the Department was generally able to refine what was proposed to address those comments and better achieve the stated objectives. Therefore, the Department does not see a need to conduct public meetings prior to publishing this final rule. In regards to outreach, the Department agrees that this is a good idea and intends to add updated DCS information to our already robust ECR related outreach activities.

Overview of regulatory changes to address public comments

The Department of State has revised the proposed changes to §123.9 to address the public comments and to better achieve its stated objectives in this final rule. The public comment process was helpful in identifying areas where changes needed to be made to fully achieve the intended objectives for the DCS for use under the ITAR and the EAR.

Placement of Destination Control Statement. This final rule removes the requirement to place the Destination Control State on the bill of lading, air waybill, or other shipping documents and retains the requirement for the invoice, which will now be more clearly described as the commercial invoice. As stated elsewhere in this final rule, the commercial invoice is the document that is most likely to achieve the purpose of this section and therefore the Department is limiting the requirement to this one document, which also will reduce the burden on exporters.

Clarifying the scope of paragraph 123.9(a) applies to items shipped (exported in tangible form), retransferred (in tangible form), or reexported (in tangible form). This final rule clarifies that the requirement applies to tangible defense articles when exported, reexported, or retransferred.

Addition of Note to paragraph 123.9(b)(1)(iv). This final rule also adds a Note to proposed paragraph (b)(1)(iv) to clarify what is meant in the DCS by the phrase “or as otherwise authorized by U.S. law and regulations.” The note clarifies that the phrase “or

as otherwise authorized by U.S. law and regulations” is included to advise that U.S. regulations contain specific license exemptions, provisions that allow shipments to be made “no license required,” as well as reexports of foreign made items containing less than de minimis U.S. origin controlled content (see 15 C.F.R. 734). This note reflects that an individual license is not required in all cases.

Procedures for Obtaining State Department Authorization to Export Items Subject to the EAR.

This final rule adds a new paragraph (d) to §123.9 to clarify the requirements for retransferring items subject to the EAR pursuant to a request for written approval from DDTC.

Other changes in this rule. The Department makes a number of minor edits to the ITAR that address reporting requirements. This final rule removes the requirement to provide seven paper copies for various requests in §§124.7, 124.12, 124.14, 125.2, 125.7 and 126.9. The Department did not receive any comments on the proposed changes, except for one commenter that expressed support for the removal of unnecessary submission requirements (e.g., seven paper copies). Therefore, this final rule revises §§124.7, 124.12, 124.14, 125.2, 125.7 and 126.9 as proposed.

This final rule imposes the Code of Federal Regulations paragraph structure on §124.8. The Department received no comments on §124.8, and the provision is adopted as proposed.

This final rule replaces the previous Destination Control Statement in §124.9(a)(6) with the new language found at §123.9(b)(1)(iv). The Department received only one comment on this issue, which did not propose substantive changes, but advised that §124.9(a)(6) needed to reflect the new Destination Control Statement language. The Department notes that the proposed rule did not revise the Destination Control Statement language of §124.14(c)(7). Therefore, this final rule revises §§124.9 and 124.14 accordingly.

This final rule also changes the identification of the agency responsible for permanent import authorizations in §123.4 from the Department of the Treasury to Department of Justice. The Department did not receive any comments on the proposed changes. Therefore, this final rule revises §123.4 as proposed.

This final rule removes the pilot filing requirement found in §123.13, given that, as noted in the proposed rule, it did not take into account the practices of modern airport operations and is no longer necessary. The Department did not receive any comments on the proposed change. Therefore, this final rule revises §123.13 as proposed.

This final rule revises §124.12(b) to correct the citations contained in the parenthetical from §§124.9 and 124.10 to §§124.8 and 124.9. This revision was not included in the proposed rule.

Additionally, the Department amends §126.9, Advisory Opinions and Related Authorizations, to add a new paragraph (c) for requests to interpret ITAR requirements. This revision was not included in the proposed rule but is added to clarify the

Department's practice. The Department is undertaking a review of the advisory opinion process which will be addressed in a future rule.

Finally, the Department notes that this final rule does not revise the NATO special retransfer authorizations language in §124.16, which was contained in the proposed rule. By separate Federal Register notice (81 FR 35611, June 3, 2016) effective September 1, 2016, the provisions of §124.16 will be incorporated into §126.18 and the section will be removed and reserved.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States government and that rules implementing this function are exempt from §§553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule with a 45-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. The Department has made additional refinements to what was proposed based on the public comments received, which helps to further the objectives described in the proposed rule that is published as a final rule today. The Department is also adopting a delayed effective date of 90 days.

Regulatory Flexibility Act

Since this final rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department does not believe this rulemaking is a major rule as defined in 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this final rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule removes

provisions that previously required the applicant to provide seven additional copies for various export license requests. As noted in the proposed rule, the Department believes that there would be little or no practical burden reduction since the use of electronic methods of filing has made the requirement for “seven copies” obsolete. The Department requested public comment on its estimate that there will be little or no change in the burdens associated with effected information collections as a result of this rulemaking. The Department received no public comments with respect to the information collections.

List of Subjects

22 CFR Parts 120 and 125

Arms and munitions, Classified information, Exports.

22 CFR Part 123

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, is amended as follows:

PART 120 - PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920; Pub. L. 111-266; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

2. Section 120.5 is amended by revising the section heading and paragraph (b) to read as follows:

§ 120.5 Relation to regulations of other agencies; export of items subject to the EAR.

* * * * *

(b) A license or other approval (see §120.20) from the Department of State granted in accordance with this subchapter may also authorize the export of items subject to the EAR (see §120.42). An exemption (see parts 123, 124, 125, and 126 of this subchapter) may only be used to export an item subject to the EAR that is for use in or with a defense article and is included in the same shipment as any defense article. No exemption under this subchapter may be utilized to export an item subject to the EAR if not accompanied by a defense article. Separate approval from the Department of Commerce is not required for these items. Those items subject to the EAR exported pursuant to a Department of State license or other approval would remain under the jurisdiction of the Department of Commerce for any subsequent transactions. The inclusion of items subject to the EAR on a Department of State license or other approval does not change the licensing jurisdiction of the items. (See §123.1(b) of this subchapter for guidance on identifying items subject to the EAR in a license application to the Department of State.)

**PART 123 - LICENSES FOR THE EXPORT AND TEMPORARY IMPORT OF
DEFENSE ARTICLES**

3. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107- 228; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

4. Section 123.4 is amended by revising paragraph (a)(4) to read as follows:

§ 123.4 Temporary import license exemptions.

(a) * * *

(4) Has been rejected for permanent import by the Department of Justice and is being returned to the country from which it was shipped; or

* * * * *

5. Section 123.9 is amended by revising paragraphs (b)(1) and (2) and adding paragraph (d) to read as follows:

§ 123.9 Country of Ultimate Destination and Approval of Reexports or Retransfers.

* * * * *

(b) * * *

(1) The exporter must incorporate the following information as an integral part of the commercial invoice, whenever defense articles are to be shipped (exported in tangible

form), retransferred (in tangible form), or reexported (in tangible form) pursuant to a license or other approval under this subchapter:

- (i) The country of ultimate destination;
- (ii) The end-user;
- (iii) The license or other approval number or exemption citation; and
- (iv) The following statement: “These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.”

Note to paragraph (b)(1)(iv): The phrase “or as otherwise authorized by U.S. law and regulations” is included because U.S. regulations contain specific exemptions from licensing requirements (e.g., ITAR exemptions, and EAR license exceptions and No License Required designations) and allow for certain amounts of U.S. origin content in foreign made items (see 15 C.F.R. 734).

- (2) When exporting items subject to the EAR (see §§120.5, 120.42 and 123.1(b) of this subchapter) pursuant to a Department of State license or other approval, the U.S. exporter must also provide the end-user and consignees with the appropriate EAR classification

information for each item. This includes the Export Control Classification Number (ECCN) or EAR99 designation.

* * * * *

(d) The Directorate of Defense Trade Controls may authorize reexport or retransfer of an item subject to the EAR provided that:

(1) The item was initially exported, reexported or transferred pursuant to a Department of State license or other approval;

(2) The item is for end-use in or with a defense article; and

(3) All requirements of paragraph (c) of this section are satisfied for the item subject to the EAR, as well as for the associated defense article.

* * * * *

6. Revise §123.13 to read as follows:

§ 123.13 Domestic aircraft shipments via a foreign country.

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country.

**PART 124 - AGREEMENTS, OFF SHORE PROCUREMENT, AND OTHER
DEFENSE SERVICES**

7. The authority citation for part 124 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105-261; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

8. Section 124.7 is amended by redesignating the introductory text as paragraph (a) introductory text, revising newly designated paragraph (a)(1), and adding reserved paragraph (b).

The revision reads as follows:

§ 124.7 Information required in all manufacturing license agreements and technical assistance agreements.

(a) * * *

(1) The agreement must describe the defense article to be manufactured and all defense articles to be exported, including any test and support equipment or advanced materials. They should be described by military nomenclature, contract number, National Stock Number, nameplate data, or other specific information. Only defense articles listed in the agreement will be eligible for export under the exemption in §123.16(b)(1) of this subchapter.

* * * * *

§ 124.8 [Amended]

9. Section 124.8 is amended by redesignating the introductory text as paragraph (a) introductory text and adding reserved paragraph (b).

10. Section 124.9 is amended by revising paragraph (a)(6) to read as follows:

§ 124.9 Additional clauses required only in manufacturing license agreements.

(a) ***

(6) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, commercial invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.

11. Section 124.12 is amended by revising paragraph (a) introductory text and paragraph (b)(4) to read as follows:

§ 124.12 Required information in letters of transmittal.

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The explanatory letter shall contain:

(b) ***

(4) “If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., 22 CFR 124.8 and 124.9).”

12. Section 124.14 is amended by revising paragraphs (c)(7) and (e) introductory text to read as follows:

§ 124.14 Exports to warehouses or distribution points outside the United States.

* * * * *

(c) * * *

(7) “(Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred: ‘These items are controlled by the U.S. government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations.’ ”

* * * * *

(e) *Transmittal letters*. Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The letter shall contain:

* * * * *

PART 125 - LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

13. The authority citation for part 125 continues to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778);
22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

14. Section 125.2 is amended by revising paragraph (a) to read as follows:

§ 125.2 Exports of unclassified technical data.

(a) *License*. A license (DSP-5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter. In the case of a plant visit, details of the proposed discussions must be transmitted to the Directorate of Defense Trade Controls for an appraisal of the technical data.

* * * * *

15. Section 125.7 is amended by revising paragraph (b) to read as follows:

§ 125.7 Procedures for the export of classified technical data and other classified defense articles.

* * * * *

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by a completed form DSP-83 (*see* §123.10 of this subchapter). All classified materials accompanying an application must be transmitted to the Directorate of Defense Trade Controls in accordance with the procedures contained in the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are inconsistent with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed).

PART 126 - GENERAL POLICIES AND PROVISIONS

16. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Pub. L. 111-266; Section 7045, Pub. L. 112-74; Section 7046, Pub. L. 112-74; E.O. 13637, 78 FR 16129.

17. Section 126.9 is amended by revising the heading and the first sentence of paragraph (a) and adding paragraph (c) to read as follows:

§ 126.9 Advisory opinions and related authorizations.

(a) Preliminary authorization determinations. A person may request information from the Directorate of Defense Trade Controls on whether it would likely grant a license or other approval for a particular defense article or defense service to a particular country. ***

(c) *Interpretations of the ITAR.* Any person may request an interpretation of the requirements set forth in this subchapter in the form of an advisory opinion. A request for an advisory opinion must be made in writing. Any response to an advisory opinion provided by the Directorate of Defense Trade Controls pursuant to this paragraph shall not be an authorization to export and shall not bind the Department to grant or deny any such authorization.

Rose E. Gottemoeller,
Under Secretary,
Arms Control and International Security,
Department of State.

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